

TERMS AND CONDITIONS OF PURCHASE: PURE MALT PRODUCTS LIMITED

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England and/or Scotland, when banks in London and Edinburgh are open for business.

Commencement Date: has the meaning given in condition 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with condition 22.8.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: Pure Malt Products Limited (registered in Scotland with company number SC039605) whose registered office is at Victoria Bridge, Haddington, East Lothian, EH41 4BD.

Customer Materials: has the meaning set out in condition 5.3(j).

Customer Policies: means: (i) the Customer's 'Induction and Rules for Visitors Policy'; (ii) the Ethical Trading Initiative (ETI) Base Code, a copy of which can be found here: https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Base%20Code%20%28English%29.pdf ; and (iii) any other business policies of the Customer which are relevant to the Goods and/or Services supplied under the Contract and which are notified to the Supplier.

Customer Premises: any premises belonging to or in the occupation or control of the Customer or such other premises as may be stated in an Order.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Documentation: the documentation, if any, required for the proper use of the Goods and/or Services.

Employment Liabilities: losses, costs, claims, demands, awards, fines, interest, liabilities or expenses (including reasonable legal expenses) arising from the employment of any person, the termination of such employment, the operation and/or termination of any collective agreement, any dispute which relates to such employment or collective agreement or their termination and any failure to discharge in full any obligation to inform or consult appropriate representatives or any person about the transfer of employees under TUPE;

Event of Force Majeure: any one or more of the following events to the extent that such event(s) is/are beyond the reasonable control of the party seeking to rely on it/them: riot, civil unrest, military action, terrorism, earthquake, storm, flood, inability to obtain supplies of power, fuel, or transport, exercise of emergency powers by any governmental authority.

Future Supplier: means any third party providing deliverables to the Customer similar to the Goods and/or Services following the expiry or termination of the Contract.

Goods: the goods (or any part of them) to be supplied under the Contract as set out in the Order and where relevant includes their packaging, wrapping, labelling and all component parts and any Software and Documentation supplied to aid the use of such goods.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is set out in the Order or as agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Manufacturer: means the manufacturer of Goods (whether or not the Supplier).

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Contract Details Cover Sheet (if any), the Customer's purchase order form, in the Customer's written acceptance of the Supplier's quotation, or in any email correspondence between the Customer and the Supplier in which the Customer has requested the Supplier to supply certain Goods and/or Services.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services set out in the Order or as agreed in writing by the Customer and the Supplier.

Software: any software to be supplied (whether licensed or assigned) under the Contract as described in the relevant Order and where relevant includes any Documentation supplied to aid use of such software.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

Supplier Personnel: any person used by the Supplier to perform its obligations under the Contract, including but not limited to any employees, workers, agents, contractors or subcontractors of the Supplier.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 as re-enacted amended or consolidated from time to time.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Supply of Goods

3.1 The Supplier undertakes and warrants to the Customer:

- (a) that the Supplier holds absolute legal and beneficial title to and in to the Goods and has unfettered right to sell and supply them and to pass good unencumbered title to the Customer;
- (b) that the Goods are new and unused (unless otherwise agreed in the Order), of first class quality and durability and shall correspond with their description and any applicable Goods Specification;
- (c) that the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (d) that where the Goods are manufactured products, they will be free from defects (whether actual or latent) in design, materials and workmanship and remain so for 12 months after delivery;
- (e) that where the Goods comprise food ingredients, processing aids, or products (whether for incorporation in the Customer's food products or otherwise) which are supplied with a "best before" or "use by" date, they will match their description, be of satisfactory quality and be safe, suitable for

use and free from any defects up to such "best before" or "use by" date;

- (f) that the Documentation provided by the Supplier in respect of the Goods (if any) is, or will be, of such standard as to enable suitably trained personnel of the Customer to understand, use, operate and maintain the Goods in a safe manner and to a level of competence sufficient for the Customer's business purposes;
- (g) that the Goods shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, and if they are intended for use in or in connection with food or food ingredients or any machinery at the Customer Premises, which is in contact (direct or indirect) with food or food ingredients, comply with any specific applicable rules and regulations in the country of Customer Premises as well as any directions from the Customer regarding machinery or goods handling food and food ingredients.

3.2 The Supplier shall provide the Customer with the benefit of any Manufacturer's warranties in respect of the Goods and the Supplier shall not supply the Goods in a form or state which would invalidate or alter in any way the Manufacturer's warranty or guarantee.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.4 Where the Goods comprise food ingredients, processing aids or products (whether for incorporation in the Customer's food products or otherwise), the Supplier shall provide documentation on the processing and contents of the Goods and their components as well as their traceability as follows:-

- (a) The Supplier shall be able to identify all direct and indirect suppliers from whom the Supplier has been supplied with substances intended to be, or expected to be, incorporated into food or in direct contact with food. The identification of substances including raw materials, primary packaging and other relevant packaging and processing aids, intermediate/semi-processed products, part-used materials and finished products, shall be adequate to ensure full traceability, and as a minimum such documentation shall include (i) name and address of supplier; (ii) nature of products delivered by the supplier;

(iii) date of delivery; (iv) volume/quantity; and (v) batch number; and

- (b) The Supplier's traceability system and procedures must encompass all product ranges to ensure that traceability is maintained through the entire food chain from raw material to finished product and vice versa. Such documentation shall be kept by the Supplier for a period of 3 years from the Delivery Date and shall be made immediately available to the Customer upon request.

3.5 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.6 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at condition 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.7 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and to meet all generally applicable accepted industry standards and practices;

- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the purchase order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then as agreed between the parties (**Delivery Date**);
- (b) such location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 All Goods shall be delivered by the relevant Delivery Date, and time shall be of the essence in relation to the delivery of the Goods.

4.4 Delivery of the Goods shall be completed on (i) the completion of unloading of the Goods at the Delivery Location; and (ii) acknowledgement of delivery of the Goods is signed by an appropriate authorised representative of the Customer.

4.5 Where the Contract includes installation, delivery of the Goods shall not be complete until completion of the installation work.

4.6 The Supplier shall ensure that the quantity of Goods supplied and delivered shall not be less than the quantity specified in the Order and the Customer shall not be charged for any Goods supplied and delivered in excess of such quantity.

4.7 If the Supplier:

- (a) delivers less than the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.8 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in condition 6.1.

4.9 Title and risk in the Goods shall pass to the Customer on completion of delivery in accordance with condition 4.3.

5. Supply of Services

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier undertakes and warrants to the Customer that it shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Customer Policies;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;

- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the Service Specification.

6. Customer remedies

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in condition 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return

them to the Supplier at the Supplier's own risk and expense;

- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with condition 3.1.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. Customer's obligations

7.1 Subject to condition 7.2, the Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times (convenient to the Customer) to the Customer's premises for the sole purpose of providing the Services, subject to the requirement that any bulk delivered Goods will require to be booked into the Customer's HGV booking-in system at least 24 hours prior to the proposed delivery time (unless otherwise permitted by the Customer); and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably require in order to provide the Services.

7.2 In providing the Goods and/or Services, the Supplier shall use its best endeavours to observe the Customer Policies in all material respects.

8. Charges and payment

8.1 The price for the Goods:

- (a) shall be the price set out in the Order;
- (b) shall remain fixed until completion of the Contract; and
- (c) shall be inclusive of the costs of packaging, insurance, royalty fees, licence fees, duties, off-loading and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

- 8.2** The charges for the Services shall be set out in the Order, shall remain fixed until completion of the Contract and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3** In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4** In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall, unless otherwise agreed between the parties, pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier. The Customer reserves the right to refuse payment of part of all of any invoice which is not submitted in accordance with these Conditions.
- 8.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6** If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this condition 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.8** No payment made by the Customer shall constitute a waiver by the Customer of any breach by the Supplier of any of its obligations under the

Contract, or prejudice the Customer's right in the future to question or dispute any payments and any payment withheld by the Customer shall be without prejudice to any other rights and remedies of the Customer under the Contract or at law.

- 8.9** Claims for credit or payment due to the Customer in respect of returned Goods, slow deliveries, overcharges or other matters for which the Supplier is liable under the Contract shall be settled within 30 days from the notification by the Customer to the Supplier of such claims.
- 8.10** The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this condition shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. Intellectual property rights**
- 9.1** All Intellectual Property Rights:
- (a) in information supplied to the Supplier by the Customer and/or its subcontractor(s) for the purposes of the Supplier performing its obligations under the Contract; and
 - (b) developed in connection with the delivery of any Goods and/or the provision of Services pursuant to the Contract shall vest in and remain with the Customer and/or its subcontractor(s) as the case may be and the Supplier hereby assigns ownership of all such Intellectual Property Rights to the Customer and will ensure that its employees, subcontractors and agents execute all documents necessary to assign all such rights (including moral rights) to the Customer.
- 9.2** Subject to condition 9.1 above all Intellectual Property Rights in information supplied by the Supplier and/or its subcontractor(s) authorised by the terms of the Contract (if any) for the purposes of and in performing the Services shall vest in and remain with the Supplier and/or its subcontractor(s) as the case may be and the Supplier grants to the Customer a perpetual, royalty-free, non-exclusive licence to use the Supplier's Intellectual Property Rights in relation to any Goods supplied or Services provided and shall execute an agreement giving effect to this condition if requested by the Customer.
- 9.3** For the avoidance of doubt:

- (a) nothing in the Contract shall grant any rights in or affect the ownership by the Customer of any of its Intellectual Property Rights; and
- (b) the Supplier shall not use any of the Customer's Intellectual Property Rights (including the 'Pure Malt' business name or any of the Customer's branding) without the Customer's prior written consent.

10. Indemnity

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

10.2 This condition 10 shall survive termination of the Contract.

11. Insurance

11.1 Before the Supplier commences any work under the Contract, the Supplier shall effect and maintain an insurance policy covering the Goods for their full value from time to time against loss or damage, including loss or damage in transit and until the risk in the Goods passes to the Customer.

11.2 Before the Supplier commences any work under the Contract, the Supplier shall:

- (a) effect and maintain a public and product liability policy of insurance and if relevant an employers' liability policy of insurance in respect of its liabilities under the Contract with a limit of indemnity under each such policy of not less than £5,000,000 for any one claim arising out of any one incident or event

and without limit as to the number of claims during the period of insurance; and

- (b) effect and maintain until the expiration of three years commencing from the acceptance of the Goods or the completion of the Services in accordance with these Conditions, professional indemnity insurance with a limit of indemnity of not less than £2,000,000 for any one claim arising out of any one incident or event and without limit as to the number of claims during the period or insurance.

11.3 The Supplier shall, on the Customer's request, provide proof that all insurances required to be effected by the Supplier have been effected and are being maintained and all premiums paid in full.

11.4 If the Customer shall consent to the Supplier subcontracting any portion of the Services or of the Contract pursuant to condition 22.1 of these Conditions, the Supplier shall ensure that before such subcontractor commences any work under the Contract, either each such subcontractor shall effect and maintain the policies of insurance referred to in condition 11.2 above and that all premiums are paid in full, or that all the liabilities of such subcontractors are specifically covered by the Supplier's policies effected and maintained in accordance with this condition 11.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this condition 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 The Supplier shall maintain confidential information in confidence and shall exercise in relation to the confidential information no lesser

security measures and degree of care than those which the Supplier applies to its own confidential information, which the Supplier warrants as providing the protection required by these Conditions against unauthorised disclosure, copying or use.

13. Termination

13.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a)** with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of conditions 5.3(h), 16, 17, or 18; or
- (b)** for convenience by giving the Supplier three months' written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a)** the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 Business Days after being notified in writing to do so;
- (b)** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c)** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14. Consequences of termination

14.1 On termination of the Contract:

- (a)** the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- (b)** any sums due to the Customer shall become immediately payable by the Supplier without set-off or deduction.

14.2 If a party (the first party) is prevented from performing its obligations under the Contract by an Event of Force Majeure which continues for more than 30 days then the other Party will be entitled to terminate that Contract without liability to the first party forthwith on giving written notice of termination to the first party.

14.3 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

15. Force majeure

15.1 Subject to conditions 15.2 and 15.3, to the extent that either party is prevented or delayed from performing any of its obligations under the Contract by an Event of Force Majeure beyond such party's reasonable control, such party's obligation to perform those obligations so affected by the Event of Force Majeure under the Contract will (during the continuation of the Event of Force Majeure) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances.

15.2 Notwithstanding condition 15.1, if the Supplier claims that it is affected by an Event of Force Majeure, such claim shall be valid only to the extent that a prudent supplier operating to standards expected of a leading supplier of the Goods and/or Services in question could not have foreseen and prevented or avoided the effect of such event or occurrence.

15.3 A party claiming to be affected by an Event of Force Majeure will not be entitled to invoke the

provisions of condition 15.1 unless it performs fully the following obligations:

- (a) on becoming aware of any Event of Force Majeure it shall have notified the other party by the most expeditious method then available, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period of which such failure or delay will continue; and
- (b) it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.

16. Compliance with Laws

In performing its obligations under the Contract, each party shall comply with all applicable laws, rules and regulations of governmental entities having jurisdiction over such performance, including without limitation requirements concerning, where applicable, the manufacture, packaging, carriage, packing, delivery and installation of the Goods and the performance of the Services, and any health and safety and environmental legislation.

17. Compliance with Anti-Slavery and Human Trafficking Laws

17.1 Without prejudice to the generality of condition 16, in connection with the Contract and the performance by the Supplier of its obligations under it, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this condition 17.1;
- (d) notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; and
- (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Customer in connection with the Contract; and permit the Customer and its third party representatives to inspect the Supplier's records, and to meet the Supplier's

personnel to audit the Supplier's compliance with its obligations under this condition 17.1.

17.2 The Supplier represents and warrants that it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.3 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this condition 17.

18. Anti-Bribery and Anti-Corruption

18.1 Without prejudice to the generality of condition 16, in connection with the Contract and the performance by the Supplier of its obligations under it, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if the activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and condition 18.1(b) and will enforce them where appropriate;
- (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
- (e) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Contract.

18.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this condition 18 (**Relevant Terms**). The Supplier

shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Term.

18.3 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this condition 18.

18.4 For the purpose of this condition 18, the meaning of adequate procedures and foreign public official whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this condition 18, a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

19. TUPE

19.1 The Supplier shall take all steps necessary to ensure that it organises itself and any Supplier Personnel such that they will not be 'assigned' to any organised grouping providing the Services in accordance with the Contract for the purpose of TUPE and will not therefore, as a matter of law, have its/his employment transferred to the Customer on the termination of the whole or part of the Contract under TUPE.

19.2 If it is found or alleged that any Supplier Personnel has become an employee of the Customer or a Future Supplier pursuant to TUPE then the Supplier shall indemnify the Customer (for itself and as trustee for any Future Supplier) and keep it indemnified in full against any and all Employment Liabilities arising out of or in connection with any claim or demand by such Supplier Personnel or any trade union, staff association, worker's committee or any other worker representative who represents or purports to represent any or all of the Supplier Personnel.

20. Documentation

20.1 The Supplier shall provide the Customer with all information required in order to enable the Customer to understand, use and operate the Goods (including but not limited to installation, commissioning, operation and maintenance) and all revisions and updates to such information from time to time.

20.2 The Customer shall have the right to copy, reproduce and generally use the Documentation for the Customer's business purposes and the implementation, use and operation of the Goods.

20.3 The right to copy, reproduce and use the Documentation referred to in condition 20.2 shall also extend to the Customer's subcontractors and third party suppliers provided that such use is required for the purposes of providing services to the Customer.

21. Security

21.1 The Supplier shall ensure that Supplier Personnel conform to all security safety and works regulations and such other local instructions as may be notified to the Supplier whilst on any Customer Premises.

21.2 The Customer may remove from and refuse entry and re-admission to any Customer Premises, any person who is, in the reasonable opinion of the Customer, not conforming to these requirements or is otherwise not a fit person to be allowed on Customer Premises.

21.3 The Supplier shall use its best endeavours to ensure that Supplier Personnel are aware of and comply with the requirements of this condition 21 and that no Supplier Personnel unwilling to comply will be engaged on any Customer Premises.

22. General

22.1 Assignment and other dealings.

(a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

(b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer. Where the Supplier requests consent to an assignation or subcontract pursuant to this clause (b)22.1(b) then, to help the Customer reach a decision on consenting to the proposed assignation or subcontract, the Supplier shall provide the Customer with a copy of any proposed assignation agreement or subcontract, together with the name of the proposed assignee or subcontractor and any information that the customer may require about the proposed assignee or subcontractor.

(c) If the Customer shall consent to the Supplier subcontracting any portion of the Services or of the Contract, the Supplier agrees that it shall remain ultimately liable to the Customer for the provision of the Services and for the

obligations set forth in the Contract and for the acts and omissions of its subcontractors.

22.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or to any replacement address notified in writing by either party; or sent by email to the address specified in the Order.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am] on the second Business Day after posting; if sent by [email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this condition 22.2(b) , business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

22.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

22.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.5 No partnership or agency.

(a) The relationship between the Customer and the Supplier is that of purchaser and supplier. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

(b) Nothing in the Contract will render the Supplier or any of the Supplier's Personnel an employee or partner of the Customer and the Supplier will not hold itself out, and will procure the Supplier Personnel do not hold themselves out, as such.

22.6 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.7 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise for any third party to enforce or otherwise invoke any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

22.8 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

22.9 Remedies Cumulative. The rights and remedies of the Customer under the Contract are cumulative, may be exercised as often as the Customer considers appropriate and are in addition to its rights and remedies under general law.

22.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.

22.11 Jurisdiction. Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter

or formation provided that the Customer may apply to any court of competent jurisdiction to defend its Intellectual Property Rights.